

Message Text

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ORIGIN EB-08

INFO OCT-01 EUR-12 IO-13 ISO-00 SP-02 USIA-06 AID-05
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DRAFTED BY EB/ITP/EWT:HLCLARKE:ABA
APPROVED BY EB/ITP:W BARRACLOUGH
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EUR/EE - GBOUTIN
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FM SECSTATE WASHDC
TO AMEMBASSY BUDAPEST
USMISSION GENEVA

C O N F I D E N T I A L STATE 061368

USMISSION GENEVA FOR MTN DEL

E.O. 11652: GDS

TAGS: EEWT, HU

SUBJECT: U.S.-HUNGARIAN TRADE AGREEMENT

REF: STATE 57704; STATE 55986

1. SUMMARY: THIS MESSAGE REVIEWS MAJOR ISSUES RESOLVED
DURING THE SECOND ROUND OF NEGOTIATIONS, IN WASHINGTON
FEBRUARY 28-MARCH 3, INCLUDING SOME INTERPRETATIONS AGREED
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UPON BETWEEN THE TWO DELEGATIONS. MAIN TOPICS WERE
BUSINESS FACILITATION, DEFINITIONS, SERVICES, IMMUNITY OF
FIRMS, EXPROPRIATION, ACCESS TO GOVERNMENT COMMERCIAL OFFICES,
MARKET DISRUPTION, AND PORT ACCESS. OTHER ISSUES WERE MORE
QUICKLY RESOLVED. THE RELATIONSHIP BETWEEN THE AGREEMENT
AND THE GATT, AND THE AGREED MINUTE ON CEMA TRADING REGULA-
TIONS AND THE HUNGARIAN TARIFF, REMAINED ESSENTIALLY AS
AGREED DURING THE FIRST ROUND IN BUDAPEST, FEBRUARY 7-11.
END SUMMARY.

2. BUSINESS FACILITATION. UPON REFLECTION, U.S. DEL DECIDED THAT GOH PROPOSALS FOR RECOGNITION OF CURRENTLY AVAILABLE BUSINESS FACILITIES IN HUNGARY COULD BE READ TO UNDERMINE OUR OBJECTIVE OF SEEKING SIGNIFICANT IMPROVEMENT OF SITUATION OF U.S. BUSINESS IN HUNGARY. WE THEREFORE REJECTED GOH PREAMBLE PROPOSAL ON BUSINESS FACILITIES, AND A COMPROMISE BETWEEN THAT FORMULATION AND U.S. DESIRE FOR ADDITIONAL FACILITIES IS NOW REFLECTED IN ARTICLE III (1). AS IN BUDAPEST, U.S. DEL CONTINUED OFTEN TEDIOUS EFFORT TO MINIMIZE RESTRICTIVE LANGUAGE, ESPECIALLY THAT REFERRING TO LAWS AND REGULATIONS, WITH MIXED RESULTS. AS ANTICIPATED, GOH TENACIOUSLY RESISTED ANY COMMITMENTS WHICH MIGHT BROADEN HUNGARIAN CONTACTS WITH FOREIGN FIRMS (OR GOVERNMENT COMMERCIAL OFFICES) OR GRANT U.S. OR HUNGARIAN FIRMS GREATER FLEXIBILITY THAN CURRENTLY PERMITTED BY HUNGARIAN LAWS. NEVERTHELESS, U.S. DEL BELIEVES THE RESULTING PARAGRAPHS (INCLUDING THOSE ON DIRECT COMMERCIAL REPRESENTATIONS) PROVIDE A STRONG BASIS UPON WHICH EMBASSY CAN PURSUE EQUITABLE AND IMPROVED TREATMENT FOR U.S. FIRMS WITH GOH. WE WERE NOT ABLE TO LEARN MUCH ABOUT THE PENDING NEW HUNGARIAN ENTERPRISE LAW; AS DETAILS BECOME AVAILABLE, WE WOULD APPRECIATE EMBASSY REPORTING ON ITS IMPLICATIONS FOR U.S. FIRMS AND THE HUNGARIAN ECONOMY. GOH DEL MEMBERS CONFIDENTIAL

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MENTIONED PRIVATELY THAT THEY HOPED PURCHASES FROM US WOULD EXPAND AT THE EXPENSE OF THE EC, SUGGESTING THAT GOH MAY BE WILLING TO TAKE PRACTICAL STEPS BEYOND ITS FORMAL COMMITMENTS TO FACILITATE U.S. FIRMS.

3. DEFINITION OF FIRMS (ARTICLE X(1)). SINCE THIS PROVISION IS A KEY TO THE APPLICABILITY OF MANY PROVISIONS OF THE AGREEMENT, ESPECIALLY BUSINESS FACILITATION AND ACCESS TO GOVERNMENT COMMERCIAL OFFICES, EMBASSY SHOULD TAKE NOTE OF THE FOLLOWING INTERPRETATIONS AGREED UPON BY THE TWO DELEGATIONS. (A). IN THE U.S. DEFINITION, THE TERM "COMMERCIAL ACTIVITIES" IS INTENDED TO INCLUDE FINANCIAL, TECHNICAL OR OTHER VARIETIES OF COMMERCIAL ACTIVITY, IT INCLUDES ANY AND ALL ACTIVITIES COVERED BY THE TRADE AGREEMENT. (B). THE HUNGARIAN DEFINITION OF FIRM IS INTENDED TO CONFIRM THAT HUNGARIAN FIRMS NOT AUTHORIZED TO ENGAGE IN FOREIGN TRADE (AND THEIR REPRESENTATIVES) MAY HAVE CONTACTS WITH FOREIGNERS WHERE PERMITTED BY HUNGARIAN LAW. SPECIFICALLY THIS DEFINITION IS INTENDED TO COVER ACCESS BY U.S. FIRMS TO THEIR END USERS (ARTICLE III (5)) AND HUNGARIAN ACCESS TO GOVERNMENT COMMERCIAL OFFICES (ARTICLE VI(1)). THE OPEN-ENDED NATURE OF THIS DEFINITION WAS A FACTOR IN U.S. ACCEPTANCE OF HUNGARIAN LANGUAGE AT SEVERAL POINTS, AND WE WOULD OBJECT IF IT SEEMS TO BE INTERPRETED MORE NARROWLY IN PRACTICE.

4. SERVICES. AFTER NUMEROUS DRAFTING EFFORTS BEFORE AND

DURING NEGOTIATIONS, WE WERE UNABLE TO DRAW UP A STRONG COMMITMENT TO NONDISCRIMINATORY TREATMENT OF SERVICES WHICH DID NOT CONFLICT WITH RESTRICTIVE LEGISLATION EITHER IN THE U.S. OR HUNGARY. THE TWO DELEGATIONS COULD AGREE THAT

CONTRACTS SHOULD GENERALLY BE DRAWN UP ON THE BASIS OF COMMERCIAL CONSIDERATIONS, SO WE APPLIED THIS CONCEPT TO SERVICES IN ARTICLE II(3). TO INSURE RENEWAL OF THE AGREEMENT THREE YEARS FROM NOW, EMBASSY AND WASHINGTON
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AGENCIES WILL NEED TO CONTINUE TO EXAMINE HUNGARIAN TREATMENT OF U.S. SERVICES, ESPECIALLY TRANSPORTATION AND INSURANCE.

5. IMMUNITY LETTER. U.S. DEL CONTINUED TO URGE HUNGARIANS TO INCLUDE GOH COMMITMENT IN TEXT OF AGREEMENT ITSELF, AND WAS NEVER ABLE TO FULLY UNDERSTAND GOH REFUSAL, SINCE THE LETTER IS EQUALLY BINDING, AND THE SOVIET AGREEMENT INCLUDES A SIMILAR PROVISION (FOR FTOS ONLY). GOH REPLY WAS SIMPLY THAT THE LACK OF IMMUNITY FOR HUNGARIAN FIRMS WAS BEYOND QUESTION IN HUNGARIAN LAW. WE ACCEPTED THEIR LETTER, BUT PRESUME GOH HARD LINE IS BASED PRIMARILY ON OTHER FACTORS, PERHAPS AN INTERNAL OR IDEOLOGICAL DISPUTE ON THE STATUS OF FIRMS AND THUS A DESIRE TO DELIBERATELY DISTINGUISH THEM FROM SOVIET AND ROMANIAN CONFIRMS. IT MAY ALSO BE THAT GOH DEL WAS SIMPLY UNWILLING TO REOPEN THE QUESTION OF A LETTER FOR BUREAUCRATIC REASONS. GOH FREELY AGREED TO DROP "IN THE TERRITORY OF THE OTHER PARTY" WHICH HAD BEEN IN U.S. DRAFT AND IN SOVIET AGREEMENT.

6. EXPROPRIATION. U.S. DEL (BARRACLOUGH) EXPLAINED THAT GOH LETTER REGARDING THE AVAILABILITY OF BANK GUARANTEES WAS UNACCEPTABLE, AS IT FELL FAR SHORT OF OUR UNDERSTANDING OF THE OBLIGATIONS OF STATES IN INTERNATIONAL LAW. IT PROVIDED NO COMMITMENT BY THE GOVERNMENT, THERE WAS NO ASSURANCE AGAINST EXPROPRIATION FOR OTHER THAN PUBLIC PURPOSES, NOR DID THE GUARANTEE APPROACH ENSURE PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION -- INCREASES IN ASSETS WOULD REQUIRE NEW APPLICATIONS FOR GUARANTEES. AFTER SOME DISCUSSION, GOH DEL WAS UNABLE TO EXPLAIN HOW COMPENSATION MIGHT OCCUR IF A FOREIGN FIRM FAILED TO APPLY FOR A GUARANTEE, ALTHOUGH GOH DEL SAID HUNGARY DOES HAVE A PROCEDURE FOR COMPENSATION AND REVIEW BY COURTS WHEN IT
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EXERCISES EMINENT DOMAIN OVER DOMESTIC REAL ESTATE. U.S. DEL RELUCTANTLY DROPPED THE QUESTION OF EXPROPRIATION FROM THIS AGREEMENT, BUT EMPHASIZED THAT THE LACK OF A CLEAR-CUT LEGAL COMMITMENT COULD HURT GOH CHANCES OF ATTRACTING U.S.

FIRMS FOR COOPERATION (EITHER IN THE FORM OF INVESTMENT OR, FOR EXAMPLE, LICENSES). U.S. DEL SAID EXPROPRIATION WILL REMAIN IMPORTANT TO THE U.S., AND U.S. WILL RETURN TO THE NEED FOR ASSURANCES IF IT BECOMES DESIRABLE TO FIND WAYS TO ENCOURAGE INDUSTRIAL COOPERATION. (FYI - NEITHER DELEGATION RAISED THE QUESTION OF A BILATERAL AGREEMENT ON INDUSTRIAL COOPERATION.)

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7. MARKET DISRUPTION. U.S. DEL (BARRACLOUGH) AGAIN CHALLENGED GOH LANGUAGE ON NEW PRODUCTS (ANNEX 1(A)), BOTH DURING NEGOTIATING SESSION AND AT LUNCHEON MARCH 1 WITH NYERGES, POINTING OUT THAT ESPECIALLY WHEN SENSITIVE IMPORTS (SUCH AS TEXTILES) ARE ALREADY BEING LIMITED FROM OTHER COUNTRIES, IMPORTS FROM HUNGARY COULD INDEED CAUSE MARKET DISRUPTION EVEN THOUGH THE PRODUCTS MIGHT BE NEW EXPORTS FOR HUNGARY. NYERGES INSISTED THAT HIS LANGUAGE WAS NOT NEARLY SO SWEEPING; IT DID NOT EXCLUDE THE POSSIBILITY THAT A NEW PRODUCT MIGHT THREATEN MARKET DISRUPTION, BUT WAS INTENDED ONLY TO REASSURE HUNGARY THAT THE INTRODUCTION OF A NEW PRODUCT ON THE AMERICAN MARKET WOULD NOT, BY ITSELF, LEAD TO A CLAIM OF MARKET DISRUPTION. U.S. DEL ACCEPTED THE LANGUAGE ON THAT BASIS, AND U.S. MAY RETURN TO NYERGES' ARGUMENT IF SUCH A CASE ARISES.

8. PORT ACCESS. GOH DEL SURPRISED U.S. DEL ON MARCH 1 BY SAYING THAT HUNGARIAN INTEREST IN PORT SERVICES WAS REALLY A DESIRE FOR MFN ACCESS TO U.S. PORTS, AND COMPLAINED THAT ACCESS BY HUNGARY'S TINY MERCHANT MARINE WAS LESS ADVANTAGEOUS THAN FOR OTHER "SOCIALIST" COUNTRIES. U.S. DEL EXPLAINED THAT ARTICLE VII OF ROMANIAN TRADE AGREEMENT WAS SUBJECT TO PORT SECURITY REQUIREMENTS, WHICH DID NOT
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OFFER MFN, AND THAT U.S. WAS NOT PREPARED TO NEGOTIATE MARITIME PROVISIONS. RICHARD BANK OF EB/MA JOINED U.S. DEL MARCH 2 TO EXPLAIN THAT HUNGARY RECEIVED THE SAME TREATMENT AS POLAND AND ROMANIA, WHICH WAS THE BEST AVAILABLE FOR EASTERN EUROPE, AND NOT STRICTLY COMPARABLE TO US TREATMENT OF THE SOVIET UNION. U.S. DEL OFFERED TO DRAFT A LETTER, SEPARATE FROM AGREEMENT, IN WHICH U.S. AUTHORITIES WOULD CONSIDER HUNGARY'S PORT ACCESS SITUATION AFTER SIGNATURE OF THE TRADE AGREEMENT, AS A MEANS TO MEET WHAT APPEARED TO BE BUREAUCRATIC REQUIREMENT FOR GOH DEL. WHEN WE PRESENTED TEXT OF LETTER ON MARCH 3 (SEE BELOW), GOH DEL SOUGHT TO REDRAFT IT IN RECIPROCAL TERMS. U.S. DEL OBJECTED, NOTING THAT PORT ACCESS TO BUDAPEST WAS USELESS WITHOUT CLARIFICATION OF U.S. NAVIGATION RIGHTS ON THE DANUBE. GOH DEL WAS UNABLE TO DISCUSS THE LATTER, AND THUS ACCEPTED THE LETTER IN DRAFT FOR FURTHER CONSIDERATION. EMBASSY SHOULD BEAR IN MIND THAT THERE IS NO PROSPECT FOR AN IMPROVEMENT IN THE TERMS OF ACCESS FOR

HUNGARIAN VESSELS, WHICH WERE LIBERALIZED IN 1976, AND AN EFFORT TO DEBATE THEM NOW CAN ONLY DELAY SIGNATURE OF THE TRADE AGREEMENT.

9. SEPARATE DRAFT LETTER REGARDING MARITIME MATTERS.
BEGIN TEXT.

THE U.S. DELEGATION HAS NOTED THE CONCERN, EXPRESSED BY THE HUNGARIAN DELEGATION, REGARDING THE CONDITIONS AFFECTING THE HUNGARIAN MERCHANT MARINE IN UNITED STATES TRADES. APPROPRIATE U.S. AUTHORITIES WILL CONSIDER THESE MATTERS AND POSSIBILITIES FOR FUTURE ACTION FOLLOWING SIGNATURE OF THE AGREEMENT ON TRADE RELATIONS. END TEXT.

10. OTHER ISSUES. U.S. DEL ACCEPTED MFN STANDARD FOR
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FINANCIAL PROVISIONS, AFTER LEARNING THAT WHEN CONVERTIBLE CURRENCY IS INVOLVED, MFN CAN BE BETTER THAN NATIONAL TREATMENT. GOH DEL ACCEPTED U.S. ARTICLE XI ON TERMINATION, AFTER WE EXPLAINED THAT WE HAD NO FLEXIBILITY. VANCE

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<< END OF DOCUMENT >>

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